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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Approval of a Significant Energy Resource Decision and Voluntary Request for Approval of a Resource Decision	Docket No. 17-035-40 Utah Industrial Energy Consumers Motion to Stay Proceedings
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The “Utah Industrial Energy Consumers”¹ or (“UIEC”) respectfully request that the Utah Public Service Commission (“Commission”) stay Rocky Mountain Power’s (“RMP”) request for Commission approval of a significant resource decision in Docket No. 17-035-40 (“Docket”). Presently there is no resource decision to review. And the facts necessary to review a significant energy resource decision (when a decision has been properly presented for approval) are not known and currently cannot be discovered until matters currently proceeding in other dockets conclude. Staying this Docket is needed to ensure compliance with the Energy Resource Procurement Act, to allow the Commission a full and fair opportunity to discharge its statutory obligations, and to allow an adequate “public interest” review.

I. STATEMENT OF FACTS

1. Around 4 April 2017, RMP filed a 2017 Integrated Resource Plan (“IRP”).² RMP supplemented its filing around 13 April 2017.³ RMP provided additional information concerning Wyoming wind related resources around 7 August 2017.⁴

¹ For purposes of this Motion to Stay, the UIEC is a reference, for convenience only, of Kennecott Utah Copper LLC, Tesoro Refining & Marketing Company LLC, LafargeHolcim Ltd., and Post Consumer Brands, LLC, as Petitioners for Intervention in Utah P.S.C. Docket No. 17-035-40.

² See PacifiCorp’s 2017 Integrated Resource Plan (“IRP”), Utah P.S.C. Docket No. 17-035-16 (“IRP Docket”).

2. Around 16 June 2017, RMP filed an application in Utah seeking Commission approval of the solicitation process for renewable wind resource development in Wyoming.⁵ A hearing occurred on 19 September 2017.⁶ A proposed request for proposal (“RFP”) schedule anticipated the release of the RFP to the market on 25 August 2017 with the final shortlist evaluation completed by 8 January 2018.⁷ The independent evaluator noted that it would file its final report to the Commission “within 21 days for RMP’s final ranking of bids and identification of its Energy Resource Decision.”⁸

3. Around 30 June 2017, RMP also filed a request in this Docket for Commission approval of a potential resource decision to construct or procure new wind resources and transmission facilities in Wyoming.⁹ This request seeks a determination under Utah Code sections 54-17-302 and 54-17-402. RMP claims that these resources represent a “time-limited opportunity.”¹⁰ The Commission had scheduled a technical conference for 30 August 2017.¹¹ It rescheduled the technical conference for 11 October 2017.¹² Intervenor testimony is due 5 December 2017.¹³ RMP’s testimony on the RFP results is due 16 January 2018.¹⁴ Presently

³ *Id.*

⁴ *Id.*

⁵ See RMP Application for Approval of Solicitation Process, In the Matter of the Application of Rocky Mountain Power for Approval of Solicitations Process for Wind Resources (“RFP”), (June 16, 2017) (Utah. P.S.C. Docket No. 17-035-23 (“RFP Docket”).

⁶ Scheduling Order, RFP (Aug. 29, 2017) (RFP Docket).

⁷ See Report of the Utah Independent Evaluator Regarding PacifiCorp’s Draft Renewable Request for Proposals 19, RFP (Aug. 11, 2017) (RFP Docket),.

⁸ *Id.* at 9.

⁹ RMP Application, In the Matter of the Application of Rocky Mountain Power for Approval of a Significant Energy Resource Decision and Voluntary Request for Approval of a Resource Decision (June 30, 2017) (Docket).

¹⁰ *Id.* at 2.

¹¹ Scheduling Order and Notices of Technical Conference And Hearing (July 27, 2017) (Docket).

¹² Notice of Technical Conference (Sept. 14, 2017) (Docket).

¹³ Scheduling Order (July 27, 2017) (Docket).

¹⁴ *Id.*

Intervenors have only 21 days to review and file direct testimony responding to the RFP results.¹⁵ A hearing is scheduled to begin on 6 March 2018.¹⁶

4. RMP claims that this Docket, the IRP Docket, and the RFP Docket need to run concurrently to permit RMP to capture the “time-limited opportunity.”¹⁷ RMP claims that a delay could jeopardize RMP’s ability to capture the full value of the production tax credits (“PTCs”), risk the alleged customer benefits arising from PTCs, and potentially undermine the 2017R–RFP.¹⁸

5. RMP or an affiliated company has filed applications seeking regulatory approval of these wind and transmission facilities in Wyoming, Oregon, and Idaho.¹⁹ These dockets are proceeding with independent schedules that in some instances lag behind this Docket.²⁰ This proposal has faced significant criticism by regulators and parties in these other jurisdictions.²¹

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Supplemental Testimony of Rick T. Link 2, RFP (Aug. 31, 2017) (RFP Docket).

¹⁸ *Id.* at 13.

¹⁹ RMP Application, In the Matter of the Application of Rocky Mountain Power for Certificates of Public Convenience and Necessity and Binding Ratemaking Treatment for New Wind and Transmission Facilities (June 30, 2017) (Idaho P.U.C. Case No. PAC-E-17-07); *available at* <http://www.puc.idaho.gov/fileroom/cases/summary/PACE1707.html> (last visited Sept. 22, 2017). Order, In the Matter of PacifiCorp, dba Pacific Power, Request for Proposals of an Independent Evaluator to Oversee the Request for Proposal Process, (Sept. 14, 2017) (Or. P.U.C., Docket No. UM 1845), *available at* <http://apps.puc.state.or.us/orders/2017ords/17-345.pdf> (last visited Sept. 19, 2017) (The Oregon Public Utility Commission conditionally approved the RFP subject to modifications and subsequent acknowledgement of PacifiCorp’s 2017 IRP); Staff’s Comments in Response to Energy Vision 2020 Update at 6, In the Matter of PacifiCorp, dba Pacific Power’s 217 Integrated Resource Plan, (Aug. 24, 2017) (Or. P.U.C., Docket No. LC 67 , *available at* <http://edocs.puc.state.or.us/efdocs/HAC/lc67hac132056.pdf> (last visited Aug. 30, 2017); Scheduling Order, In the Matter of the Application of Rocky Mountain Power for Certificates of Public Convenience and Necessity and Nontraditional Ratemaking for Wind and Transmission Facilities, (Aug 24, 2017) (WY P.S.C. Docket No. 20000-520-EA-17) (setting a hearing on February 22, 2018) *available at* https://dms.wyo.gov/OpenAttachment.aspx?file=mbell_24292_082420171103.13AM_20000-520-24292.pdf (last visited Sept. 21, 2017).

²⁰ *See e.g.*, Scheduling Order, In the Matter of the Application of Rocky Mountain Power for Certificates of Public Convenience and Necessity and Nontraditional Ratemaking for Wind and Transmission Facilities (Aug 24, 2017) (WY P.S.C. Docket No. 20000-520-EA-17), (setting a hearing on February 22, 2018),.

²¹ Heather Richards, *Rocky Mountain Power wants to spend billions on wind energy in Wyoming, but there will be hurdles*, Billings Gazette, Sept. 10, 2017, *available at* http://billingsgazette.com/news/state-and-regional/wyoming/rocky-mountain-power-wants-to-spend-billions-on-wind-energy/article_acef011b-6768-5023-

6. RMP completed a 2016R–RFP that failed to produce a significant energy resource decision involving these wind facilities.²² The 2016R–RFP was issued 4 April 2012.²³

7. Wind resource development has occurred in Wyoming for over 30 years. PacifiCorp has had interests in or independently developed wind in Wyoming for more than 10 years.²⁴

8. PTCs have been available to wind energy developers since October 1992 with the most recent amendment occurring in December 2015.²⁵

II. THE COMMISSION SHOULD STAY THIS DOCKET UNTIL A RESOURCE DECISION HAS BEEN MADE AND FACTS EXIST TO PERMIT A COMPLETE PUBLIC INTEREST REVIEW OF THE DECISION.

The Commission should stay the Docket to allow sufficient time for material facts to develop, for a resource decision to be made after the solicitation process, to permit a full and fair review of these facts, and to honor the procedures established under the Energy Resource Procurement Act. A court may exercise its discretion to stay proceedings when decisions in another matter are necessary to resolve the issues before it.²⁶ The legislature has also empowered the Commission to extend the statutory review periods “when warranted and . . . in

[9fce-902e43178c0c.html](http://www.puc.state.or.us/efdocs/HAC/lc67hac132056.pdf) (last visited Sept. 21, 2017), attached as **Exhibit A**; Staff’s Comments in Response to Energy Vision 2020 Update at 6, In the Matter of PacifiCorp, dba Pacific Power’s 217 Integrated Resource Plan, (Aug. 24, 2017) (Or. P.U.C., Docket No. LC 67), available at <http://edocs.puc.state.or.us/efdocs/HAC/lc67hac132056.pdf> (last visited Aug. 30, 2017).

²² Supplemental Testimony of Rick T. Link 13, 15 (Aug. 31, 2017) (RFP Docket).

²³ *Id.* at 3.

²⁴ PacifiCorp owns and purchases energy produced by 15 wind projects in Wyoming as of 2015. See Rocky Mountain Power, Our Wind Energy Resources (June 2015), https://www.rockymountainpower.net/content/dam/rocky_mountain_power/doc/Efficiency_Environment/Our_Environmental_Commitment/RMP_WindEnergyHandout.pdf (“Since 2006, our owned and contracted wind-powered generation capability has increased by a total of more than 1,400 megawatts.”), attached as **Exhibit B**; Daniel Terdiman, *From coal mine to wind farm*, CNET, July 24, 2009, available at <https://www.cnet.com/news/from-coal-mine-to-wind-farm/> (describing the history behind RMP’s decision to build a wind farm in 2006 in Glenrock, Wyoming), attached as **Exhibit C**.

²⁵ See Energy Policy Act of 1992, Pub. L. No. 102–486, 106 Stat. 2776 (1992); Consolidated Appropriates Act of 2016, Pub. L. 114–113 (2015).

²⁶ *Lewis v. Moultrie*, 627 P.2d 94, 96 (Utah 1981).

the public interest.”²⁷ Because facts needed in this Docket cannot be known before the conclusion of other dockets, and because a completed resource decision is required before filing an application for approval of a significant resource decision, staying all activity in this Docket (and extending the review period) is warranted and in the public interest.

A. The Approval of a Significant Energy Resource First Requires Completion of the Solicitation Process.

The Commission’s finding must be sufficiently detailed to describe how the Commission considered each material fact and reached its conclusion.²⁸ Indeed, it is the Commission’s statutory responsibility to make “complete, accurate, and consistent findings of fact” in accordance with the governing statutory standards.²⁹ Failure to undertake a complete review of the facts required under the governing statutes invites error and results in an arbitrary and capricious ruling.³⁰

The Energy Resource Procurement Act prescribes an orderly process for an approval of a significant resource decision. Before approving a significant energy resource decision following a solicitation process, the Commission must first approve the solicitation process.³¹ Once a solicitation process is approved and completed, the Commission must then determine that the significant energy resource decision “is reached in compliance with the [approved] solicitation process[.]”³² The Commission must also undertake a public interest review that considers:

- (i) whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in this state;

²⁷ Utah Code Ann. §§ 54-17-302(5) and -517-402(5).

²⁸ *Adams v. Bd. Of Review of Indus. Comm’n*, 821 P.2d 1, 4–5 (Utah 1991) (quoting *Nyrehn v. Indus. Comm’n*, 800 P.2d 330, 335 (Utah App. Ct. 1990)).

²⁹ *See Adams*, 821 P.2d at 5. (quoting *Milne Truck Lines, Inc. v. Public Serv. Comm’n*, 720 P.2d 1373, 1378 (Utah 1986)).

³⁰ *See id.* at 4–5.

³¹ Utah Code Ann. § 54-17-302(1)(a).

³² Utah Code Ann. § 54-17-302(2).

- (ii) long-term and short-term impacts;
- (iii) risk;
- (iv) reliability;
- (v) financial impacts on the affected electrical utility; and
- (vi) other factors determined by the commission to be relevant.³³

To begin this review, the Commission's rule requires that the utility provide, among other things: information demonstrating utility compliance with the requirements of the Energy Resource Procurement Act and that the approval of the significant energy resource could be in the public interest; information of the solicitation process including summaries of all bids received, summaries of the rankings and bid evaluations, and independent evaluator reports; and the data, models, engineering studies, and analyses used to evaluate the significant energy resource.³⁴ The legislature granted the Commission at least 120 days to analyze this information, review the significant energy resource decision, and approve or disapprove of the decision.³⁵

The Commission rightfully has expressed concern over its ability to discharge its statutory review obligations when an insufficient record exists.³⁶ It should stay this Docket to prevent similar concerns with the significant energy resource decision approval. The review of a decision requires that there first be a decision. But before RMP can make a decision, RMP must first complete the solicitation process. Filing a request to approve a significant energy resource before the completion of the solicitation process violates Commission rules:

If [RMP] is contemplating acquiring a Significant Energy Resource through a solicitation process, after it has completed its evaluation of bids but prior to filing a request to approve a Significant Energy Resource,

³³ Utah Code Ann § 54-17-302(3)(c).

³⁴ Utah Admin Code R746-430-2.

³⁵ Utah Code Ann. § 54-17-302(5); *see also*, Utah Code Ann. § 54-17-402(6) (providing 180 days).

³⁶ Commission Order and Notice of Scheduling Conference at 2, In the Matter of the Application of Rocky Mountain Power for Approval of Solicitation Process for Wind Resources., (Aug. 22, 2017) (Docket) (discussing the limited record before it for an approval of the solicitation process).

[RMP] shall provide a written notification to the Commission of the Significant Energy Resources it has selected from the bids and the reasoning for the utility's selection of those resources.³⁷

The Commission, also, cannot perform its statutory review to determine if the significant energy resource decision complied with the approved solicitation process when the solicitation process has not been approved and completed.

Besides putting the proverbial cart before the horse, the current schedule in this Docket does not allow a full review of the necessary information required by Utah Administrative Rule 746-430-2. Until the solicitation process is complete, and a decision made, neither the Commission nor the parties can ascertain with reasonable certainty facts such as the facility costs, summaries of the bids, information used during the bid evaluation process, the report from the independent evaluator, and other information required by Commission rules. Allowing this Docket to proceed and RMP to supplement such information as it becomes known through the advancement of the solicitation process deprives the Commission and parties of the full 120 (or 180) day review mandated by the Energy Resource Procurement Act. The slipping of the originally proposed schedules in the RFP and this Docket further strips stakeholders of a meaningful opportunity to explore and evaluate the relevant information and frustrates the time review mandated by law.

Rushing decisions and complex engineering and construction projects involving multiple state and federal agencies rarely delivers on-time and on-budget project delivery. In fact, history is replete with examples where rushed projects, chasing financial incentives, end in costly overruns, economic write-downs, and higher costs to ratepayers.³⁸ Compressing the review period, while expediting a solicitation process, only compounds these risks of project defects. Not until the solicitation process is complete, the feasibility of the timelines and costs assumed in

³⁷ Utah Admin Code Rule R746-430-2(2)(a) (emphasis added).

³⁸ See Bob Porterfield, *Failed Nevada Experimental Energy Plant Costs [sic] Millions*, KOLO NEWSNOW, Dec. 2, 2007, available at <http://www.kolotv.com/home/headlines/12037031.html> (reporting on an energy decision heavily influenced on government funding/incentives ultimately failed and exposed ratepayers to the costs associated with the project overruns and failures), attached as **Exhibit D**.

the RFP are tested by the market, and a complete decision is rendered after deliberation of bids can a review of the significant energy resource review begin. Moreover, as demonstrated by the multi-year 2016R–RFP process that resulted in no resource decisions,³⁹ advancing the pre-approval of a decision not yet rendered could result in unnecessary resource expenditures by the government and private parties preparing for and advancing this Docket should no resource decision ever arise from the final RFP.

The multi-jurisdictional acceptance of these resources is also unknown at this time, with resource reviews underway—and not completed—in Oregon, Idaho, and Wyoming.⁴⁰ RMP’s resource proposal has received significant criticism in these jurisdictions⁴¹ as well as in Utah where government leadership continues to challenge RMP’s apparent decision—to invest billions outside of Utah for wind and transmission when RMP claims transmission constraints restrict renewable energy development in rural Utah—as contrary to Utah’s public interest.⁴² The Energy Resource Procurement Act allows the Commission to consider the impacts of multistate regulation, and the Commission has a duty to protect Utah customers from a disproportionate, unjust, and imprudent allocation of costs for these resources if ultimately they are approved in Utah but rejected in other jurisdictions.

When RMP sought Commission approval of a significant energy resource known as Lake Side 2, the entire process from RMP’s request for approval of solicitation process through the

³⁹ Statement of Facts (“SOF”), ¶ 6.

⁴⁰ SOF, ¶ 5.

⁴¹ *Id.*

⁴² See Emma Penrod, *County leaders chide Rocky Mountain Power for putting wind project in Wyoming instead of rural Utah*, The Salt Lake Tribune, Sept. 16, 2017, available at <http://www.sltrib.com/news/environment/2017/09/16/county-leaders-chide-rocky-mountain-power-for-putting-wind-project-in-wyoming-instead-of-rural-utah/>, attached as **Exhibit E**; UIEC Petition to Intervene, Exhibit A (Sept. 1 2017) (referencing an Desert New Article by Jasen Lee: Jasen Lee, *Elected officials want Rocky Mountain Power to invest more in rural Utah*, Deseret News, Aug. 26, 2017, available at <http://www.deseretnews.com/article/865687578/Elected-officials-want-Rocky-Mountain-Power-to-invest-more-in-rural-Utah.html?ito=792> (last visited Sept. 1, 2017)).

Commission approval of the significant energy resource decision took over three years.⁴³ Compressing a multi-year process into a single calendar year through the concurrent running of the solicitation, integrated resource plan, and significant energy resource dockets, as well as the related dockets in other jurisdictions, undermines the protections and procedures prescribed by the Energy Resources Procurement Act, ensures that an inadequate record is available for review in this Docket, and deprives the Commission and stakeholders of the deliberate and meaningful review mandated by law. To prevent the legal error and arbitrary and capricious result that will arise from an expedited and truncated process, the Commission should stay this Docket until RMP renders a decision following the completion of an approved solicitation process.

B. THE LEGISLATURE PROVIDED RMP WITH A MECHANISM THAT WOULD PERMIT IT TO MAKE A DECISION ON A TIME CRITICAL OPPORTUNITY WITHOUT TRUNCATING THE SIGNIFICANT ENERGY RESOURCE APPROVAL PROCESS AND UNDULY SHIFTING THE RISKS ASSOCIATED WITH RUSHED DECISIONS TO THE RATEPAYERS.

A stay in this proceeding will not unduly prejudice RMP and will protect ratepayers from the harm associated with a rushed decision. First and foremost, the attractiveness of Wyoming for wind development and the availability of PTCs to potentially reduce customer costs for such wind resources are not new concepts, especially to RMP, which has previously developed wind resources in Wyoming.⁴⁴ RMP's knowledge of Wyoming wind and PTCs predated the 2016R–RFP, yet RMP failed to reach the resource decision that it presumably intends to make here.⁴⁵ RMP has further failed to adequately describe how recent circumstances drive a “time-critical opportunity” for which it asks the Commission to preapprove.

These wind resources reflect a tax driven proposal. They are purportedly “time critical” because the tax incentives—as RMP has known since at least December 2015—are set to

⁴³ See Report and Order, In the Matter of the Application of PacifiCorp for Approval of a 2009 Request for Proposals for Flexible Resource, (Apr. 11, 2011) (Docket), 2011 WL 2586807.

⁴⁴ SOF, ¶¶ 7, 8.

⁴⁵ See *id.*

diminish not because the resources are immediately needed or the resources are in jeopardy of disappearing.⁴⁶ No amount of speculative customer benefits warrant disregarding the law; RMP's planning decisions should not justify ignoring the legislature's established process for significant energy resource selection, review, and approval regardless of the claimed customer benefits that may ultimately arise from such action.

Ignoring (for present purposes) that the wind resources reflect a tax driven proposal and assuming (for argument sake only) that the wind resources truly present a "time-limited opportunity," the legislature provided a process that would enable RMP to capture this opportunity without imposing the risks associated with quick action and rushed review on rate-paying customers.⁴⁷ Utah Code section 54-17-501(1) allows the Commission to waive the solicitation process, the resource plan, and the significant energy resource approval for "a time-limited commercial or technical opportunity that provides value to the customers of the affected electrical utility." For such "time-limited opportunities," the legislature created an expedited process that involves a technical conference, independent evaluator review, and decision within 13 to 21 business days of a utility filing a verified application.⁴⁸ The legislature shielded customers from risks associated with such expedited actions by deferring decisions on cost recovery for future prudence reviews and withholding any presumption that such expedited actions were prudent.⁴⁹ RMP has elected to not assume the costs risks and not seek a waiver. Instead, by concurrently filing the RFP, IRP, and SER approval dockets in Utah, as well as in other states, RMP seeks both an expedited process and to pass all risk associated with a rushed decision to Utah customers. Basically, RMP is asking the Commission to re-write the legislative balance struck in Utah Code section 54-17-501. The Commission should not entertain RMP's

⁴⁶ SOF, ¶¶ 3, 4.

⁴⁷ Utah Code Ann. § 54-17-501(1)(b).

⁴⁸ *Id.*, -501(4)–(7).

⁴⁹ *Id.* -501(10)(b), (c).

request. To prevent prejudice to ratepayers and a disregard for the legal process for significant energy resource decisions, the Commission should stay this Docket.

III. CONCLUSION

This Docket currently ignores and violates legal and regulatory requirements. Before requesting an approval of a significant resource decision under Utah Code section 54-17-302, RMP must first render a decision. Before RMP can render a decision, it must complete an approved solicitation process or obtain a waiver of the solicitation process. RMP has chosen the solicitation process, and the solicitation process is not yet approved or complete. A rushed decision that disregards the mandated legal processes in favor of chasing tax incentives imposes undue risks and costs on ratepayers, is inefficient, and is likely unlawful. To protect ratepayers from these risks and honor the process carefully crafted by the legislature, UIEC respectfully requests the Commission stay this Docket until the RFP is completed, the resource decision made, and the request for approval is properly filed.

DATED this 22nd day of September 2017

/s/ Chad Baker

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CERTIFICATE OF SERVICE
(Docket No. 17-035-40)

I hereby certify that on this 22nd day of September 2017, I caused to be e-mailed, a true and correct copy of the foregoing UTAH INDUSTRIAL ENERGY CONSUMERS' MOTION TO STAY PROCEEDINGS to:

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